

October 30, 2006

TIMOTHY L. MCMAHAN  
Direct (360) 699-5900, X3  
tlmcmahan@stoel.com

**VIA EMAIL AND US MAIL**

Mr. Allen J. Fiksdal  
EFSEC Manager  
Energy Facility Site Evaluation Council  
925 Plum Street SE, Building 4  
PO Box 43172  
Olympia, WA 98504-3172

**Re: In the Matter of Application No. 2003-01  
Sagebrush Power Partners, LLC; Kittitas Valley Wind Power Project**

Dear Allen:

Enclosed, please find the Applicant's Opening Brief, Proposed Findings of Fact and Conclusions of Law, and Proposed Site Certification Agreement.

During the Applicant's efforts through the Kittitas County land use consistency hearings and during the EFSEC hearing, the Applicant made several commitments in an attempt to minimize potential affects of the Kittitas Valley Wind Power Project (the "Project"). These commitments may be considered additional mitigation measures to be added to amend those set out in Sec. 1.4 of the ASC:

1. The Applicant has committed in its testimony to construct the Project pursuant to the Lower End Scenario described in the ASC, DEIS and Addendum to the DEIS, and to build the Project within turbine corridors set out therein. The Applicant committed to restricting the placement of turbines in certain parts of the corridors described in Addendum to the DEIS to reduce visibility of the Project. The Applicant further committed to limit itself to a maximum of 65 wind turbines, with a corresponding reduction of installed nameplate capacity depending on the type of turbine installed.
2. The Trenching Protocol adopted during the construction of the Wild Horse Wind Power Project, was agreed be utilized during the construction of this project and be included as part of the SCA.

Mr. Allen J. Fiksdal

October 30, 2006

Page 2

3. That subject to Council approval the Environmental Monitor for the construction of the Project should be independent and hired directly by the Council. Further that the Environmental Monitor should be a qualified engineering firm (or a person associated with such firm) such as the engineering firm that ultimately became the Environmental Monitor at the Wild Horse Wind Power Project in the spring of 2006

4. The Applicant has agreed to other development standards addressing local governmental concerns in the proposed Development Agreement Between Kittitas County, Washington and Sagebrush Power Partners, LLC submitted in the County process for which there was no disagreement. These are as follows:

**A. Restoration** Prior to initiating construction activities, the Applicant must provide sufficient financial assurance to ensure complete decommissioning of the Project.

Decommissioning Plan. Prior to construction of the Project, Applicant shall provide to EFSEC, a Project decommissioning and site restoration plan (the "Plan") as required under WAC 463-42-655, prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date hereof. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the Project site restoration or management costs. The Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Plan.

Decommissioning Scope and Timing. Applicant or any Transferee, as the case may be, shall commence decommissioning of the Project within twelve (12) months the date of termination of this Agreement.

Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; re-grading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads and/or power cables that Project Area landowners wish to retain); and final reseedling of disturbed lands (all of which shall comprise "Decommissioning"). Decommissioning

shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

**Decommissioning Funding and Surety.** Except as provided below in the paragraph entitled “Financial Security and Utility Project Ownership”, Applicant or any Transferee, as the case may be, shall provide security sufficient for Decommissioning costs in the form of a performance bond, guaranty or a letter of credit to ensure the availability of funds for such costs (the “Decommissioning Security”) to EFSEC. The Decommissioning Plan shall provide that the Decommissioning costs shall be reevaluated annually during construction of the Project and once every five (5) years thereafter from the date of Substantial Completion to ensure sufficient funds for Decommissioning and, if the parties agree at that time that the Decommissioning costs need to be modified, the amount of the Decommissioning Security shall be adjusted accordingly. The Applicant shall be required to provide such security within 30 business days of Substantial Completion. On or before the date on which the Decommissioning Security must be established, the Applicant or any Transferee, as the case may be, shall provide, at its election, one of the following:

**Performance Bond.** Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to the Decommissioning costs. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Applicant under this Agreement and under the Bond provisions.; or

**Letter of Credit.** Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated “A” or better by a Rating Service. The letter of credit shall be in an amount equal to the Decommissioning costs. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development

Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. The State of Washington, by and through EFSEC or its successor or designees shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the Applicant's or Transferee's (as the case may be) failure to perform its decommissioning obligations when due; or

**Guaranty.** Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least \$75,000,000

Financial Security and Utility Project Ownership. Applicant or any Transferee, as the case may be, shall provide the Decommissioning Security for the performance of its Decommissioning obligations arising hereunder unless if, at the time the duty to provide Decommissioning security arises as provided above, the owner of the Project is an investor-owned electric utility regulated by the FERC and the Washington Utilities and Transportation Commission (WUTC), in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.

**B. Roads** The Applicant has agreed to the following further mitigation responding to local County concerns;

Project Access Roads. Access to the various rows of turbines will be achieved via graveled access roads branching from state highways 10 and 97 and County roads Bettas and Hayward Roads.

Access roads from state highways 10 and 97 shall be constructed with slope and culverts designed according to WSDOT and Washington state access management standards under Title 468 WAC and Chapter 47.50 RCW. Access from County roads shall be constructed with the appropriate slopes and culverts in accordance with Kittitas County standards. Project site roads shall be designed in accordance with Table 12-1 of the

Kittitas County Road Standards for Private Roads with Low Density Traffic. In areas where Project roads exceed a 12% grade, the roads shall be designed to ensure that fire vehicles can gain access to the site as necessary to provide emergency services.

County roads, including shoulder pavement, shall be video monitored before and after construction of the Project to identify road degradation. Bettas Road that will be used for Project construction and operations (approximately 1.4 miles from state highway 97 to Hayward Hill Road) will be improved, following construction, to the current Kittitas County road standards applicable to this section of road.

That portion of Hayward Hill Road that will be used for Project construction and operations (approximately 1.4 miles) will be improved, to a 22-foot gravel road, from Bettas Road to the access road for turbine string B. If construction of the Project results in the degradation of the existing pavement and/or shoulders on the County roads other than Bettas and Hayward Hill Roads, Applicant shall reinstate these roads to as near the condition they were in prior to construction.

Applicant will construct a visitor's kiosk and public viewing area near the proposed O&M facility off Bettas road with adequate signage directing the public to a safe parking lot to view and learn about the Project

Applicant shall monitor traffic levels following completion of construction of the Project for a period of three years. After that time, Applicant shall continue monitoring of tourist and operations traffic to the Project upon written request from the EFSEC. Should tourist and operations related traffic to and from the Project site exceed WSDOT warrants, as contained in Chapter 910 of the WSDOT Design Manual, the Applicant shall construct right and/or left turn lanes on SR 97. Said improvements shall be designed and constructed in accordance with WSDOT guidelines.

Approval of a franchise for location of facilities within County owned right-of-way (including overhead electric power lines) shall be required.

*Project Site Access. Project access roads run across both private and public (WDNR) lands. In order to avoid and minimize potential impacts to recreation on public lands the Applicant will implement an adaptive management approach to allow access to and through the Project Area to access public lands for recreational purposes. Adaptive management allows for changes over time to the level of control and types of activities on the Project site, as needed. In general, the Applicant will permit controlled access to and through the site to public lands, as long it does not interfere with or introduce adverse impacts on Project*

Mr. Allen J. Fiksdal  
October 30, 2006  
Page 6

*operations or personnel. At a minimum, Project site access during operation shall be allowed as follows:*

- Private property owners who wish to access their property from Project Access Roads will be allowed to do so as necessary under a formal access license and a key to a gated entrance.
- Officials of the Washington State Departments of Natural Resources are currently allowed to access the Project site and will continue to be allowed access by key.
- The Applicant will allow others to access the Project site on a case-by-case basis. Active recreation activities such as camping and off-road vehicle usage will not be allowed on the Project site in order to avoid and minimize potential impacts to habitat and wildlife from such activities.

5. The Applicant has stipulated that it is able to mitigate shadow flicker by programming the offending turbines to shutdown during those specific times that significant shadow flicker occurs. It further stipulated that it would institute this mitigation to all existing residences on non participating landowners within 2,500 feet of a turbine that have a line of sight view (view of turbine not blocked by topography and/or vegetation) from the residence to that turbine, upon request of the non participating land owner.

Very truly yours,

Timothy L. McMahan

Darrel Peebles

TLM/DP:nh

Enclosures

cc (w/enclosures): Kittitas Valley Wind Power Project Application No. 2003-01 Service List  
(attached)